OLR Bill Analysis

sSB 443

AN ACT CONCERNING PESTICIDES ON SCHOOL GROUNDS, PARKS, PLAYGROUNDS, ATHLETIC FIELDS AND MUNICIPAL GREENS AND BANNING THE SALE AND USE OF GENETICALLY-ENGINEERED LAWN OR TURF SEEDS.

SUMMARY:

This bill bans selling, offering for sale, distributing, marketing, using, or planting lawn or turf seed that is at least partially genetically engineered to make the seed pesticide resistant. It subjects violators to civil fines and liability for economic damage to neighboring property owners.

The bill imposes restrictions on applying pesticides to municipal parks, athletic fields, greens, and playgrounds. The bill establishes electronic public notice requirements for these applications.

The bill also extends the general ban on applying lawn care pesticide on certain school grounds to public and private high schools, starting in 2017. It changes the information certain schools must provide about pesticide policies and use.

It also makes technical changes.

EFFECTIVE DATE: Upon passage, except for the restrictions on pesticide application on municipal grounds, which take effect October 1, 2014 and the provisions on school pesticide application which take effect January 1, 2017.

LAWN AND TURF SEED BAN

Genetic Engineering

Under the bill, "genetic engineering" is a process by which a lawn or turf seed is produced from an organism or organisms in which the genetic material has been changed by:

1. in vitro nucleic acid techniques (see below), including recombinant DNA techniques and direct injections of nucleic acid into cells or organelles (parts of cells) or

2. fusing cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

The bill defines "in vitro nucleic acid techniques" as techniques, including recombinant DNA techniques, that use vector systems and techniques involving the direct introduction into organisms of hereditary materials (e.g., genes) prepared outside the organisms, such as micro- or macro-injection, chemo- or electro-poration, microencapsulation, and lipsosome fusion.

Scope of the Ban

The bill's ban applies to a seed, seed mixture or combination, or plant grown from the seed that is (1) commonly sold, marketed, or known as a grass seed and (2) intended for residential or commercial use. It includes:

1. cool season Kentucky bluegrass;

2. chewings, hard, red, or tall fescue;

3. annual, intermediate, or perennial ryegrass; and

4. colonial or creeping bentgrass.

Existing law requires certain genetically engineered seed and seed stock to be labeled as such (see BACKGROUND).

Penalties and Economic Damages

Under the bill, anyone who knowingly sells, offers for sale, distributes, or markets the banned lawn or turf seed is civilly liable for a fine of up to $1,000 per product, per day.

The penalties must accrue and be assessed for each uniquely named, designed, or marketed product. The bill prohibits calculating them by multiplying the number of individual packages of the same product sold, offered, displayed, distributed, marketed, used, or planted.

The bill imposes a $250 fine on anyone who knowingly uses or plants the lawn or turf seed. Anyone who uses or plants the seed is also liable for economic damages suffered by neighboring property owners caused by the use or planting.

Enforcement

The bill requires the agriculture commissioner to enforce the ban, within available appropriations. And it permits him to adopt regulations to implement and enforce the ban.

APPLICATION AT PARKS, ATHLETIC FIELDS, GREENS, OR PLAYGROUNDS

Non-Lawn Care Pesticide

The bill generally prohibits the application of these pesticides at parks, athletic fields, municipal greens, or playgrounds by anyone who is not a Department of Energy and Environmental Protection (DEEP)-certified pesticide applicator. But anyone can apply pesticide in an emergency to eliminate an immediate human health threat if:

1. the executive head of the municipal department responsible for the property's maintenance or his or her designee (the "controlling authority") finds the application is necessary,

2. he or she thinks it is impractical to obtain a certified applicator, and

3. the application does not involve a U.S. Environmental Protection Agency (EPA)- or DEEP-restricted pesticide.

Under the bill, a pesticide is a fungicide used on plants, an insecticide, an herbicide, or a rodenticide, but not a sanitizer, disinfectant, antimicrobial agent, or pesticide bait in a tamper-proof container.

The bill specifies that "athletic field" includes any field or open space used for sports or sports-related activities. It excludes golf courses and fields or spaces that are (1) on school or college property or (2) used for professional sports.

Lawn Care Pesticide

The bill bans applying lawn care pesticide on the same municipal grounds, except to ornamental plants on municipal greens. It also permits applying pesticide on these grounds in certain emergency situations.

For an emergency pesticide application to occur under the bill, there must be an immediate threat to human health such as from mosquitoes, ticks, and stinging insects. The controlling authority must determine the emergency application is needed and the application cannot involve an EPA- or DEEP- restricted pesticide.

Under the bill, a "lawn care pesticide" is a pesticide (1) registered by EPA and (2) labeled according to federal law for use in lawn, garden, and ornamental sites or areas. It excludes:

1. EPA-registered microbial or biochemical pesticides,
2. horticultural soaps or oils registered with EPA and without a synthetic pesticide or synergist (enhancer of pesticide properties), and
3. certain pesticides classified by EPA as exempt materials (see BACKGROUND).

Microbial pesticide, under the bill, means a pesticide with a microorganism as the active ingredient. A biochemical pesticide is a naturally occurring substance that controls pests by nontoxic means.

Notice

Before pesticide can be applied to any athletic field, municipal green, park, or playground covered by the bill's requirements, the bill requires public notice of the application at least 24 hours in advance.

But if the controlling authority determines an emergency application is needed, the notice must be provided as soon as practicable.

The bill requires the notice to be made by the controlling authority within existing budgetary resources. It must be posted on the municipality's website and include the:

1. pesticide's active ingredient,
2. target pest, and
3. date or proposed date of the application and the location of the application.

Under the bill, the controlling authority must keep a copy of each notice for five years from the pesticide application date. All copies must be publicly available.

PESTICIDE APPLICATION ON SCHOOL GROUNDS

Lawn Care Pesticide Ban

Under current law, lawn care pesticide application is banned, except in an emergency to eliminate a human health threat, at public and private (1) preschools and (2) schools with students through grade eight. The bill extends the ban to cover public and private schools with students up to grade 12. For purposes of this law, "lawn care pesticide" means a federally registered and labeled pesticide for use in lawn, garden, and ornamental sites or areas.

Integrated Pest Management (IPM)

By law, IPM is the use of all available pest control techniques, including judicious pesticide use, when needed, to maintain a pest population at or below an acceptable level, while decreasing pesticide use.

The bill no longer requires local or regional boards of education for schools with IPM plans to provide (1) school staff with guidelines on how to implement their IPM plan and (2) parents or guardians with a summary of the plan. The summary includes instructions on how to be

notified of a pesticide application and a description of the procedure for an emergency pesticide application.

Under existing law, parents and guardians can request notice of pesticide application at these schools and the schools must keep a registry of these people. The notice includes the (1) pesticide's active ingredient, (2) location and date of application, and (3) person who can be contacted for more information. Anyone on the registry must be notified of an application at least on the date it occurs.

The bill applies these rules to schools with or without IPM plans, but presumably they only apply to schools with IPM plans as another statute governs schools without these plans. By law, schools without IPM plans must provide similar notice to parents and guardians, except that the notice must generally occur at least 24 hours before the application and include the target pest (CGS § 10-231c).

BACKGROUND

Exempt Pesticides

Certain pesticides and pesticide classes are not federally regulated under the federal Insecticide, Fungicide, and Rodenticide Act. They include:

1. pheromones and similar compounds used in pheromone traps,
2. preservatives for biological specimens (e.g., embalming fluids),
3. products consisting of food to attract pests,
4. natural cedar, and
5. minimum-risk pesticides (i.e., containing certain active ingredients) (40 CFR 142.25).

Labeling of Genetically Engineered Seed and Seed Stock

By law, seed and seed stock that is at least partially genetically engineered and intended to produce certain foods for human consumption must be labeled as "Produced with Genetic Engineering." But this requirement does not take effect until a certain

date after four other northeast states, including one bordering Connecticut, have enacted a similar labeling law and the total population of these states exceeds 20 million (CGS § 21a-92c).

Related Bills

SB 46, File 104, favorably reported by the Children's Committee, expands the general ban on using lawn care pesticides on school grounds to high schools.

sSB 68, File 32, favorably reported by the Environment Committee, exempts certain products from the general ban on applying lawn care pesticides on the grounds of preschools and schools with students in grade eight or lower.

HB 5580, favorably reported by the Planning and Development Committee, requires the DEEP commissioner to report on best practices for municipalities using synthetic and organic pesticides.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 17 Nay 11 (03/21/2014)